IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.636/2004
Reserved on.12.9.2007
Decided on. 27.9.2007.

Surinder Singh Jaswal. **…Petitioner.**

Versus

Union of India and others. **…Respondents**

Coram

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting ?[1]. no.

For the petitioner : Mr. Sanjay Dutt Vasudeva, Advocate.

For the respondents Mr. Sandeep Sharma, Assistant Solicitor General of India.

Rajiv Sharma, J.

A challenge has been laid by the petitioner to the two communications dated 13/14th September, 2000 as well as order dated 20th April, 2004.

The brief facts necessary for the adjudication of this petition are that the petitioner was enrolled in the Indo Tibetan Border Police on 18th August, 1998. The penalty of removal was inflicted upon the petitioner on 13/14th September, 2000. The petitioner had assailed the order of imposition of penalty of removal by way of CWP No. 950/2003. A Division Bench of this Court vide judgment dated 3rd December, 2003 disposed of the petition, the operative portion of the judgment is reproduced as under:

> **"Based upon the aforesaid submissions this petition is disposed of. If any representation/appeal filed by the petitioner against the order dated 13th Sept. 2000 is pending with the respondents, the competent authority**

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? no.

shall consider the same and dispose of it on its merits in accordance with law within a period of three months from today and communicate its decision to the petitioner. If the appeal/representation has already been disposed of and even though its result may not have been communicated to the petitioner already a fresh communication shall be sent within four weeks reiterating the result of the aforesaid representation/appeal."

In sequel to the judgment dated 3rd December, 2003, the appellate authority had rejected the appeal on the ground that the same was not preferred within time limit as provided in Rule 28 of the Indo-Tibetan Border Police Force Rules, 1994. Since this court had directed the appellate authority to decide the matter on its own merits in accordance with law within the period of three months and communicate the decision to the petitioner, the appellate authority could not reject the appeal on the technical ground of limitation. The Court after taking note of the judgment rendered by a Division Bench of this Court in CWP No. 950/2003 on 3.12.2003 passed the following order on 25.4.2007:

This Court on 3rd December, 2003 in CWP No.950/2003 preferred by the petitioner has issued the following directions to the respondents:-

"If any representation/appeal filed by the petitioner against the order dated 13th Sept. 2000 is pending with the respondents, the competent authority shall consider the same and dispose of it on its merits in accordance with law within a period of three months from today and communicate its decision to the petitioner. If the appeal/representation has already been disposed of and even though its result may not have been communicated to the petitioner already a fresh communication shall be sent within

four weeks reiterating the result of the aforesaid representation/appeal."

Mr. S.D. Vasudeva submits that the petitioner was legitimately expecting that the appeal will be decided as per the directions issued by this Court, but to the contrary, the appeal preferred by the petitioner has been rejected vide memorandum dated 20.4.2004 (Annexure P-48) on the ground that the same was preferred beyond the period prescribed. The judgment passed by this Court dated 3.12.2003 has not been obeyed by the respondents and in a very-very irresponsible manner, the appeal instead of being decided on merits has been rejected on the ground of limitation. Once this Court has issued peremptory direction, the same was to be punctually obeyed by the respondents by deciding the appeal on merits. Accordingly, I am of the prima facie view that the respondents have willfully disobeyed the direction issued by this Court in CWP No.950/2003, dated 3.12.2003 and are liable to be proceeded against under the contempt jurisdiction of this Court. Accordingly, the show cause notice is issued to respondent No.2 why contempt proceeding be not initiated against him for willfully disobeying the orders of this Court dated 3.12.2003. The registry is directed to draw separate proceedings. The notice be made returnable on 28.5.2007."

As directed by the Court on 25th April, 2007, separate COPC No. 20 of 2007 was registered and the notice was issued to the Director General, I.T.B.P. Mr. Ravinder Thakur, Central Government Counsel had appeared on behalf of the Director General, I.T.B.P. and on his request the contempt petition was listed on 30th May, 2007. The file of COPC No. 20 of 2007 was also summoned from the Registry to peruse the order

passed therein from time to time. The relevant extract of order dated 30th May, 2007 passed in COPC No. 20/2007 reads thus:

> **"It has come in the reply that the appeal of the petitioner will be considered and disposed of within a shortest possible time. Mr. Sandeep Sharma, Assistant Solicitor General of India has assured this Court that the appeal of the petitioner will be disposed of within a period of two weeks and the petitioner will also be heard in person. Mr. Sandeep Sharma has further undertaken that if during the course of hearing of the appeal it appears that the petitioner has to be examined by the Medical Board, the same will be constituted to examine the petitioner. According the respondent is directed to decide the appeal on 7th June, 2007 after hearing the petitioner in person and if need be the petitioner be examined by the duly constituted Medical Board."**

The petitioner did not make himself available before the competent authority on 7th June, 2007 and has sent a letter dated 6th June, 2007 stating therein that he was not in a position to appear on 7th June, 2007 and had prayed for enlargement of period by another two months. Accordingly on 14.6.2007, in COPC No. 20 of 2007 the respondent was directed to give exact date and time on which the petitioner should appear before the authorities.

Mr. Sandeep Sharma, Assistant Solicitor General of India shown communication dated 7th September, 2007 alongwith order dated 7th August, 2007 passed by the Director General, Indo-Tibetan Border Police. These two letters were directed to be taken on record. It is evident from the contents of letter dated 7th September, 2007 that despite due information, the petitioner did not appear before the appellate authority on 3rd August, 2007 and the order was passed in his absence on the basis of the material available on 7th August, 2007.

The Director General, Indo-Tibetan Border Police has rejected the appeal preferred by the petitioner. The Court will not express any opinion on the merits of the order passed on 7th September, 2007 since it may prejudice either of the party.

It is evident from the observations made hereinabove that despite the opportunity being provided to the petitioner to appear before the competent authority, he has not chosen to do so on two occasions i.e. 7th June, 2007 as well as 3rd August, 2007. Since the appeal has been rejected by the appellate authority on 7th August, 2007, as such it gives a new cause of action to the petitioner to assail the same as advised in the competent court of law.

Accordingly, the writ petition has become infructuous after the issuance of appellate order dated 7th August, 2007. Consequently the writ petition is dismissed having become infructuous. However, the liberty is reserved to the petitioner to assail the order dated 7th August, 2007 passed by the Director General, Indo-Tibetan Border Police. There shall be no order as to costs.

(Rajiv Sharma), Judge

September 27, 2007
Awasthi